

FAUQUIER COUNTY GOVERNMENT AND PUBLIC SCHOOLS
REQUEST FOR PROPOSAL (RFP)

ISSUE DATE: August 14, 2008 RFP# 08-09sm

TITLE: ***Broadband Network Services***

ISSUED BY: Fauquier County Government and Public Schools
Procurement Division
320 Hospital Drive, Suite 23
Warrenton, VA 20186

A Non-Mandatory Pre-Proposal conference will be held on Tuesday, August 26, 2008, starting at 10:00 a.m. ET, in the 2nd floor large conference room at the Alice Jane Childs Office Building, 320 Hospital Drive, Warrenton, Virginia. See Section 1.3, Page 3 for additional details.

Sealed Proposals Will Be Received Until **2:00 p.m., September 17, 2008** For Furnishing the Services Described Herein.

All Inquiries for Information Should Be Directed to: Susan R. Monaco, CPPB, Procurement Manager, Phone: (540) 428-8713, Fax: (540) 347-5753, e-mail: susan.monaco@fauquiercounty.gov.

IF PROPOSALS ARE MAILED, SEND DIRECTLY TO ISSUING DEPARTMENT SHOWN ABOVE, IF PROPOSALS ARE HAND DELIVERED, DELIVER TO: 320 HOSPITAL DRIVE, SECOND FLOOR, SUITE 23.

In Compliance With This Request For Proposal And To All The Conditions Imposed Therein And Hereby Incorporated By Reference, The Undersigned Offers And Agrees To Furnish The Services In Accordance With The Attached Signed Proposal Or As Mutually Agreed Upon By Subsequent Negotiations.

Full Legal Name and Address of Firm:

_____ Date: _____

_____ By: _____

(Signature in Ink)

_____ Name: _____

_____ Zip Code: _____ Title: _____

FEI/FIN NO.: _____ Telephone Number: () _____

E-Mail Address: _____ Fax Number: () _____

Note: some recipients of this RFP may elect not to respond with a proposal for a variety of reasons. The County would greatly appreciate a response referencing this RFP document, from those choosing not to participate, indicating why they are unable or unwilling to respond – thank you!

****RETURN THIS PAGE****

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1.0 PURPOSE

The purpose of this Request for Proposals (RFP) is to obtain the services of a qualified Contractor to provide the resources and expertise to create and maintain a countywide Broadband Network. All services shall be provided in accordance with the specifications contained herein and attached hereto. This solicitation is by the Fauquier County Procurement Division on behalf of the County of Fauquier, a political subdivision of the Commonwealth of Virginia, herein referred to for convenience as “Owner” and/or “County”.

- 1.1 For ease of reference, each organization submitting a response to the Request for Proposal will hereinafter be referred to as an “Offeror”. An Offeror whose proposal would result in a formal agreement will hereinafter be referred to as a “Contractor”.
- 1.2 The contents of the proposal submitted by the successful Offeror, this RFP (including general and special terms and conditions) and all modifications made thereof, will become part of any contract awarded as a result of this solicitation. Award of any contract resulting from this solicitation will require the approval of the Fauquier County Board of Supervisors. The successful Contractor will be required to sign a contract with the Owner.

1.3 Optional Pre-proposal Conference:

An optional pre-proposal conference will be held on Tuesday, August 26, 2008, starting at 10:00 a.m. ET, at 2nd floor large conference room of the Alice Jane Childs Office Building, 320 Hospital Drive, Warrenton, Virginia. Potential Offerors are responsible for any information, statements, or requirements discussed at the pre-proposal conference. Written questions may be submitted for inclusion in the pre-proposal conference until 1:00 p.m. ET, August 25, 2008, to Susan R. Monaco, CPPB, through the contact information provided on the RFP cover page. Questions will also be taken from the floor during the pre-proposal conference. Please review the RFP thoroughly prior to this meeting, and bring your copy with you. Any changes to the RFP made as a result of this conference will be issued as an addendum to the original RFP.

2.0 BACKGROUND

- 2.1 The County of Fauquier is located in the north central Piedmont region of Virginia, approximately 40 miles southwest of the nation’s capital and approximately 80 miles northwest of Richmond, the state’s capital. The County encompasses a land area of approximately 660 square miles. The counties of Prince William, Stafford, Culpeper, Warren, Clarke, Loudoun and Rappahannock border Fauquier County. The Rappahannock River forms the county’s Western border. Interstate 66 runs East-West through the northern portion of the County. In addition, five U.S. primary routes and two state primary routes traverse the County. Because of its proximity to Washington, D.C., the County has experienced consistent population growth rates over the past ten years. With a population of approximately 63,000, the County remains primarily rural in nature.
- 2.2 The County is interested in creating a countywide network that will make it possible for residents, businesses, Fauquier County Government, and other public and private organizations to take advantage of existing and new broadband technologies.

As noted in 2.1, the County is semi-rural which maintains a rural and agricultural heritage while portions of the county are home to residents who commute to large economic centers in Fairfax, Loudon, Arlington, and Washington, DC. The County desires expansion of ‘low impact’ technologies and services which promote smart economic growth. Additionally, the County desires to bridge the gap between services and technologies available in the County’s townships and developments of certain densities which are not available throughout the region.

The following are the objectives of the project:

- To provide seamless and reliable broadband access to the Internet for residents and businesses throughout Fauquier County.
- To encourage and help launch an attractive business model which provides an affordable “fee-based” broadband network, competitive in fee structure to similar service networks.
- To support economic development, particularly the recruitment and retention of businesses that rely on broadband connectivity to the Internet.
- To enhance and expand broadband technology to Fauquier County Government operations in order to increase productivity, reliability, and enhance the quality of service delivery.
- To establish a broadband network that serves Fauquier County without being a long-term burden on its taxpayers.

3.0 SCOPE OF SERVICES

The County is seeking proposals from qualified Offerors to design, implement, operate, and maintain a “fee for service” broadband network for Fauquier County residents, businesses and other public or private organizations that desire such service. The Offeror should have demonstrated experience in rural, large-scale broadband networks, particularly with designing, implementing, operating, and maintaining such networks.

The Offeror would be operating as an Internet Service Provider (ISP) in Fauquier County and shall be responsible for designing, implementing, and operating the broadband network as well as marketing, sales, customer account billing and collections, customer service, and all other tasks related to the operating of a fee-based ISP.

The County is willing to utilize its full powers granted under the Virginia Wireless Service Authorities Act (§15.2-5431.1 of the Code of Virginia) to assist the Contractor with designing, implementing, operating, maintaining, and financing a “fee for service” wireless broadband network, should Wireless be the primary or exclusive delivery strategy employed.

To facilitate the deployment of a broadband network in the County, the County will permit or take the necessary actions to secure access by the Contractor to available and suitable assets which are under the ownership or control of Fauquier County. The County may, at their discretion and if it serves in their best interest assist in the acquisitions of other assets to facilitate the deployment of the broadband network and such assistance must be spelled out in the Contractor’s response. These assets include existing communications towers/antennas, water storage tanks, property, buildings, or other suitable and appropriate locations or structures. The Contractor, once granted access to these locations or structures, will install, operate, and maintain related equipment for the broadband network.

The County will consider proposals that include financing options, to accomplish this project provided that all such options shall be in compliance with applicable Federal, State, and County laws and regulations. The successful Contractor will be expected to partner with the County on all phases of the project.

If an Offeror intends to have services provided by subcontractors, it will be mandatory for the successful awarded Contractor to act as the prime contractor for all services delivered as specified in the RFP. The Contractor shall be considered the sole point of contact with regards to contractual stipulations.

3.1 Offeror Qualification Requirements:

Offeror qualification requirements for the project shall include, but may not be limited to, the following, and shall be included in Section 6 of the proposal response:

- 3.1.1 Registered and licensed by the Commonwealth of Virginia to design, construct, provide, and maintain a broadband network as may be applicable.
- 3.1.2 Thorough and successful experience conducting business as an Internet Service Provider (ISP).
- 3.1.3 Thorough and extensive experience with broadband networks to include capital projects, operations, engineering, system maintenance, marketing, accounts receivable and payable, financing, local, state and Federal permitting, programming, site planning, design and construction management.
- 3.1.4 Through and extensive experience in analyzing local government operations and facilities for the application of broadband technology.
- 3.1.5 Familiarity with local, state and federal standards, and regulations applicable to this project(s).
- 3.1.6 Available resources to perform the work expeditiously within the established budget.

4.0 PROPOSAL PREPARATION AND SUBMISSION REQUIREMENTS

4.1 General Requirements

- 4.1.1 RFP Response. In order to be considered for selection, Offerors must submit a complete response to the RFP. **One (1) original and five (5) copies of each proposal must be submitted to the Owner.** The Offeror shall make no other distribution of the proposal.
- 4.1.2 Proposal Preparation
 - 4.1.2.1 An authorized representative of the Offeror shall sign proposal. All information requested should be submitted. Failure to submit all information requested may result in the Procurement Division requiring prompt submission of missing information and/or giving lowered evaluation of the proposal. Proposals which are substantially incomplete or lacking information may be rejected by the purchasing agency. Mandatory requirements are those required by law or regulation or are such that they cannot be waived and are not subject to negotiation.
 - 4.1.2.2 Proposals should be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be placed on completeness and clarity of content.
 - 4.1.2.3 Proposals should be organized in the order in which the requirements are presented in the RFP. All pages of the proposal should be numbered. Each paragraph in the proposal should reference the paragraph number of the corresponding section of the RFP. It is also helpful to cite the paragraph number, and repeat the text of the requirement as it appears in the section of the RFP. If a response covers more than one page, the paragraph number should be repeated at the top of the next page. The proposal should contain a table of contents, which cross-references the RFP requirements. Information which the Offeror desires to present that does not fall within any of the requirements of the RFP should be inserted at an appropriate place or be attached at the end of the proposal and designated as additional material. Proposals that are not organized in this manner risk elimination from consideration if the evaluators are unable to find where the RFP requirements are specifically addressed. The Offeror's proposal should provide all the information that it considers pertinent to its qualifications for the project and which respond to the Scope of Services described.
 - 4.1.2.4 Each copy of the proposal should be bound or contained in a single volume where practical. All documents submitted with the proposal should be contained in that single volume.
 - 4.1.2.5 Ownership of all data, materials and documentation originated and prepared for the Owner pursuant to the RFP will belong exclusively to the Owner and be subject to public inspection in

accordance with the Virginia Freedom of Information Act (FOIA). Trade secrets or proprietary information submitted by an Offeror shall not be subject to public disclosure under the Virginia FOIA; however, the Offeror must invoke the protections of Section 2.2-4342 of the Code of Virginia, on the form provided with this RFP with their proposal response (reference page 22). The Owner reserves the right to ask for additional clarification prior to establishing protection.

5.0 **Specific Proposal Requirements**

To facilitate the analysis of responses to this RFP, Offerors shall prepare concise, straightforward responses which address the following topic areas and questions. The responses to these topic areas and questions are considered to be minimum requirements and any additional supporting information may be included, as the Offeror deems appropriate. However, attention should be made to accuracy, completeness, and clarity of content. All parts, pages, figures, and tables should be numbered and labeled clearly. The response should be organized as follows:

| Section | Title |
|---------|--|
| 1 | Executive Summary |
| 2 | Business Model |
| 3 | Technical Approach |
| 4 | Coverage and Implementation Plan |
| 5 | Contractor and Project Team Qualifications And Experience |
| 6 | Non-Binding SEALED Price Proposal |

Instructions relative to each part of the response to this RFP are defined in the remainder of this section.

5.1 **Submission Details**

5.1.1. **Executive Summary**

This part of the response to the RFP should be limited to a brief narrative not to exceed two (2) pages. The summary should contain as little technical jargon as possible, and should be oriented toward non-technical readers. In addition to the Executive Summary, this section shall include the Certification page, Insurance Checklist, Proprietary Information form if applicable, and any addenda, acknowledgments, signed and filled out as required.

5.1.2. **Business Model**

The objectives of the project are outlined above. There are many similar initiatives being undertaken by other local governments in the Commonwealth of Virginia and throughout the nation; however, the business model for vendor cost recovery tends to vary across these other initiatives. This project has been developed with the expectation that the implementation and ongoing costs of the broadband network will not be funded using Fauquier County general revenue resources. It is not the intent of the County to own or operate the broadband network. In this section, please provide a narrative on the business model believed to provide the greatest long-term success for this type of project. This narrative may include any other information to support the responses to the questions listed below:

- a. Given that an objective of the project is to provide broadband Internet access for residents and businesses throughout the County, please identify your strategy to accomplish this objective using a “fee-based” service.
- b. How does this type of arrangement fit with your current business model?

- c. Would your proposed business model have the ability to serve the diverse service demands of the different geographic areas in the County?
- d. If applicable to your proposal: how do the County's powers under the Virginia Wireless Service Authorities Act. (§15.2-5431.1 of the Code of Virginia) assist with designing, implementing, operating, maintaining, and financing a "fee for service" wireless broadband network in the County, if Wireless is your primary delivery strategy? What are your expectations from the County on this issue and how would your plans be impacted if the County does not intend to form an Authority at this time?
- e. Articulate how you would expect your business model to recoup the costs associated with the roll-out of the project and provide for its long-term viability.
- f. What would the anticipated fee structure be for the service to include charges for installation, equipment, and monthly access?
- g. How do you anticipate the capital planning, contingency/reserves management, design, and acquisition process to be implemented for the project? How will your firm contend with unforeseen expenses?
- h. Describe your current customer support system. How will your organization cope with an increase in volume of new customers which may occur as a result of contract award and broadband implementation?
- i. Describe your current network management and support facilities. Describe how you will support a County-wide network and your staffing/hiring needs to operate the network.
- j. If the submittal includes the collaboration of other partners in ownership or operation of the network, describe how this group would be structured and how the group would maintain their respective interests as technology changes.
- k. In the last part of this section, Offerors shall provide a detailed statement describing any special terms and conditions of this proposal, and shall acknowledge acceptance of the RFP inclusive of the County terms and conditions, or clearly state exception to specific areas of the RFP on the form provided (reference page 23).

5.1.3. Technical Approach

The County has clear objectives for the project, but will rely on the Contractor to plan, design and construct the broadband network. In this section, please provide the preferred technical approach to the project as outlined in the following areas:

- a. Describe the type of technology that would be used for the broadband network and a conceptual, diagrammatic design of the network.
- b. The broadband network must be provided for "consumer-based" technologies with appropriate technical capabilities. Describe how the customer would access and use the network.
- c. Describe how the broadband network would be configured and deployed for residential, business, and governmental customers.
- d. What is the maximum and minimum download speeds expected for customers?
- e. What provisions would be used to provide network security and integrity?

5.1.4. Coverage and Implementation Plan

Fauquier County covers a diverse geographic area that is in varying degrees of development. The land uses located throughout the County include residential, commercial, industrial, institutional, agricultural, and woodlands. A key element of the project is the assurance that broadband Internet access is provided to the majority of the County with full coverage being a long term goal. In this section, please describe how the project would be implemented to support this long term goal. This narrative should include brief recap of key technology identified in the previous section and information on implementation of the project. Questions to consider in response are:

- a. Do different landscapes or development patterns have unique network or technological needs or challenges? If so, describe the needs and challenges and how each would be addressed.
- b. Would the County be segmented into different service areas? How and when would those service areas be created and made operational?
- c. What other unique considerations must be addressed to have broadband service deployed throughout the County?
- d. What would be an ideal timeline be for development of the overall project?
- e. What would be the role of the County during implementation of the project?

5.1.5. Contractor and Project Team Qualifications and Experience

The purpose of this section is to provide the County with an overview of the Offeror's firm and also demonstrate the qualifications of the staff the Contractor will assign to this project if selected. At a minimum, the proposal should:

- a. Designate a Project Manager and indicate office location.
- b. Include the organization chart, functional discipline, and responsibilities of project team members.
- c. Provide a concise resume or description of each team member's education, relevant professional experience, length of time employed by the Offeror and/or sub-contractor, and professional license.
- d. Discuss the experience of the Offeror in completing similar projects on schedule and within established budgets.
- e. Discuss the history of the proposed team's prior experience working together on previous similar projects.
- f. Address the qualifications noted in Section 3.1 of this RFP, if not already addressed through previous areas of your proposal response.

The personnel named in the proposal shall remain assigned to the project throughout the period of the contract. No replacement may be made without submission of a resume of the proposed replacement and prior written approval by the County.

Offerors shall clearly state whether they are proposing to subcontract any of the work herein. The names of the sub-contractors shall be provided and by proposing such firm(s) or individuals, the awarded Contractor assumes full liability for the sub-contractor's performance. Offerors shall state the amount of previous work experience with the sub-contractor(s).

g. Offeror's Project and Management Approach:

Offerors shall demonstrate their approach to the project and understanding of the work to be performed. Offerors shall also demonstrate how the necessary resources will be allocated and managed to complete the work within the agreed upon schedule. Offerors may also discuss potential design and/or construction alternatives applicable to the project.

h. Representative Projects:

The Offeror's proposal shall list and describe representative projects. Project descriptions shall include Contractor's experience in Commonwealth of Virginia government facilities. Describe the local office experience including the project name and location, brief description of the project, description of the scope of services provided, change order history, and principal contact person.

i. Offerors shall demonstrate their capacity to effectively control project costs and accomplish work expeditiously and to provide services that are responsive to the client's needs, particularly in relation to quality assurance and interdisciplinary coordination:

- Describe the cost control methodology.
- Describe the approach for reducing project costs.
- Describe the documentation, tracking and reporting system which will keep the County apprised of the project.
- Describe the program for quality control.

j. Proposed project schedule:

Offerors shall include a proposed project schedule in this section of the proposal response. Any deviations from the preliminary project schedule included with this RFP shall be explained in the Offeror's proposed schedule.

k. References:

Provide the current name, address, telephone and facsimile number, and e-mail contact address of at least three (3) references the Contractor has served either currently or in the past three (3) years; preferably those where one or more of the project team members provided the same or similar services as requested herein. Indicate the Scope of Services provided to each reference.

5.1.6. Non-Binding SEALED Price Proposal

In a separate, SEALED envelope to be submitted with the Offeror's proposal by the due date and time as noted on the cover page of this RFP, all Offerors shall include a non-binding price proposal. The non-binding price proposal shall be for the total cost of the project. Total cost shall include but not limited to installation, annual maintenance, and hourly rate for all personnel. The County will only open and review the non-binding price proposals of the top ranked Offerors, pending on the results of the initial evaluation. The County understands that the non-binding price proposal is an estimate, to be confirmed and finalized pending interviews, technical and business discussions, and negotiations.

5.1.6.1 Financing Proposals: As noted in Section 5.1.2, Business Model, given the County's intention to not use general revenue resources in funding this project, Offerors shall include any proposals for financing the project within the Non-Binding SEALED Price Proposal submission. If a detailed

financial proposal is available inclusive of rates, terms and conditions, it should be provided as part of this section, for County review and consideration.

6.0 EVALUATION AND AWARD CRITERIA

6.1 Evaluation Criteria. An Evaluation Committee will initially evaluate the proposals during the first phase of this process, using the following criteria:

- 6.1.1 Ability of Offeror to provide the requested Broadband Services as outlined herein;
- 6.1.2 Business Model, including ability to self-sustain;
- 6.1.3 Technical Approach including coverage and implementation plan, and project schedule;
- 6.1.4 Offeror's qualifications and experience including references and proposed project team; review of these criteria includes impact of any exceptions taken to the RFP.

After initial evaluation and ranking based on the criteria noted above, top-ranked Offeror's non-binding price proposals will be opened and evaluated during the second phase of the evaluation process.

6.2 Award of Contract: Selection shall be made of two or more Offerors deemed to be fully qualified and best suited among those submitting proposals on the basis of the evaluation factors included in the Request for Proposals. Negotiations shall be conducted with the Offerors so selected. Price shall be considered after the initial evaluation and ranking, but need not be the sole determining factor. After negotiations have been conducted with each Offeror so selected, the Owner shall select the Offeror which, in its opinion, has made the best proposal, and shall award the contract to that Offeror. The Owner may cancel this Request for Proposals or reject proposals at any time prior to an award, and is not required to furnish a statement of the reason why a particular proposal was not deemed to be the most advantageous (Section 2.2-4359, Code of Virginia). Should the Owner determine in writing and in its sole discretion that only one Offeror is fully qualified, or that one Offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that Offeror. The Owner reserves the right to request interviews with top-ranked Offerors as part of the evaluation process, and may choose to visit other sites where similar projects have been completed by the Offeror, to inspect the Offeror's physical plant/business location, and to conduct any investigations necessary to make their final decision. As noted herein, the award of a contract will require the approval of the County Board of Supervisors. The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the Offeror's proposal as negotiated.

7.0 ADDITIONAL INFORMATION

7.1 Ownership of Documents: Any reports, studies, photographs, negatives, or other documents prepared by the Offeror in the performance of its obligations under this contract shall be the exclusive property of the Owner, and all such materials shall be remitted to the Owner by Offeror upon completion, termination or cancellation of the contract. Offeror shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of Offeror's obligations under this contract without the prior written consent of the Owner.

7.2 Insurance Requirements: By signing and submitting a proposal under this solicitation, the Offeror certifies that if awarded the contract, it will have the insurance coverage specified on the attached Insurance Checklist at the time the work commences. Additionally, the Offeror certifies that it will maintain all required insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

The Contractor shall furnish the certificate of insurance for the coverage required, naming Fauquier County as additional insured, within five business days of the request, and shall continue to provide compliant insurance certificates throughout the term of the contract.

- 7.3 No Contact Policy: No Offeror shall initiate or otherwise have contact with any Owner representative or employee, other than the Procurement Division, after the date and time established for receipt of proposals. Any contact initiated by an Offeror with any Owner representative, other than the Procurement Division, concerning this RFP is prohibited. Any such unauthorized contact may cause the disqualification of the Offeror from this procurement process.
- 7.4 Unacceptable Performance: The Owner reserves the right to inspect all operations and to withhold payment for any work not performed or performed not in accordance with the specifications/contract documents. Payments withheld for unsatisfactory performance may be released upon receipt of satisfactory evidence that the work has been corrected to the Owner's satisfaction. These corrections shall be at no cost to the Owner. The Contractor shall correct deficiencies within 24 hours of notice by telephone or in writing. Failure to do so shall be cause for withholding of payment for the service and may result in default action.
- 7.5 Invoice/Method of Payment: The Contractor shall submit invoices, listing the services performed and completed. Invoice must show: Purchase order number, contract number, and payment due based on final contract agreed upon by both parties, at the intervals agreed upon. Invoices must be submitted to the address/persons shown on the Purchase Order. Contractors are advised that the Owner will not authorize payment if reports, tasks and duties assigned for that particular period have not been produced or completed as required; payment of any and all invoices will be based upon successful completion of the required duties and tasks for that particular time period per the final negotiated contract payment terms.
- 7.6 Contract Administration: The successful administration of this contract will require close coordination with the Contract Administrator. The Procurement Division has designated the County Economic Development Director, or his designee, as the Contract Administrator. This individual is the interpreter of the conditions of the contract and the judge of its performance. He will use all powers under the contract to enforce its faithful performance. The Contract Administrator will determine the amount, quality, acceptability, and fitness in all aspects of the work and shall decide all other questions in connection with the work. Any modifications made must be authorized by the Purchasing Agent and issued as a written amendment to the Contract.
- 7.7 Letter of Credit/Financial Guarantee: The County in its sole discretion may impose a requirement for a Letter of Credit or other Financial Guarantee from the Contractor in order to guarantee performance by the Contractor.. Should a Letter of Credit or other Financial Guarantee be required, it shall remain in effect and irrevocable during the complete term of the contract under such terms and conditions as are deemed appropriate by the County to provide for the cure of any default under the terms of the Contract and the continued operation of the Contractor..

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS/OFFERORS

Revised 11/5/07

Vendor: These general rules and conditions shall apply to all purchases and be a part of each solicitation and every contract awarded by the Procurement Division, unless otherwise specified. The Procurement Division is responsible for the purchasing activity of Fauquier County and the Fauquier County School Board. The term "Owner" as used herein refers to the contracting entity which is the signatory on the contract and may be either Fauquier County, or the Fauquier County School Board, political subdivisions of the Commonwealth of Virginia, or both. Bidder/Offeror or their authorized representatives are expected to inform themselves fully as to the conditions, requirements, and specifications before submitting bids/proposals: failure to do so will be at the bidder's/offeror's own risk and except as provided by law, relief cannot be secured on the plea of error.

Subject to all Federal, State and local laws, policies, resolutions, regulations, rules, limitations and legislation, bids/proposals on all solicitations issued by the Procurement Division will bind bidders/ offerors to applicable conditions and requirements herein set forth unless otherwise specified in the solicitation.

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1. **AUTHORITY**-Except as delegated in the Procurement Procedures Manual, the Purchasing Agent has the sole responsibility and authority for negotiating, placing and when necessary modifying every solicitation, contract and purchase order issued by the Owner. In the discharge of these responsibilities, the Purchasing Agent may be assisted by assigned buyers. Unless specifically delegated by the Purchasing Agent, no other Owner officer or employee is authorized to order supplies or services, enter into purchase negotiations or contracts, or in any way obligate the Owner for an indebtedness. Any purchase order or contract made which is contrary to these provisions and authorities shall be of no effect and void and the Owner shall not be bound thereby.
 2. **COMPETITION INTENDED:** It is the Owner's intent that this solicitation permit competition. It shall be the Bidder's/Offeror's responsibility to advise the Purchasing Agent in writing if any language, requirement, specification, etc., or any combination thereof, stifles competition or inadvertently restricts or limits the requirements stated in this solicitation to a single source. The Purchasing Agent must receive such notification not later than five (5) business days prior to the deadline set for acceptance of the bids/proposals.

CONDITIONS OF BIDDING

3. **CLARIFICATION OF TERMS** - If any Bidder/ Offeror has questions about the specifications or other solicitation documents, the prospective Bidder/ Offeror should contact the buyer whose name appears on the face of the solicitation no later than three (3) business days prior to the date set for the opening of bids or receipt of proposals. Any revisions to the solicitation will be made only by addendum issued by the Buyer. Notifications regarding specifications may not be considered if received in less than three (3) business days of the date set for opening of bids/receipt of proposals.
4. **MANDATORY USE OF OWNER FORM AND TERMS AND CONDITIONS:** Failure to submit a bid/proposal on the official Owner form provided for that purpose shall be a cause for rejection of the bid/proposal. Unauthorized modification of or additions to any portion of the Invitation to Bid or Request for Proposal may be cause for rejection of the bid/proposal. However, the Owner reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject any bid or proposal which has been modified.
5. **LATE BIDS/PROPOSALS & MODIFICATION OF BIDS/PROPOSALS:**

Any bid/proposal/modification received at the office designated in the solicitation after the exact time specified for receipt of the bid/proposal/modification is considered a late bid/proposal/modification.

The Owner is not responsible for delays in the delivery of the mail by the U.S. Postal Service, private carriers or the inter-office mail system. It is the sole responsibility of the Bidder/Offeror to ensure their bid/proposal reaches the Procurement Division by the designated date and hour.

- a. The official time used in the receipt of bids/ proposals is that time on the automatic time stamp machine in the Procurement Division.
- b. Late bids/proposals/modifications will be returned to the Bidder/Offeror UNOPENED, if solicitation number, acceptance date and Bidder/Offeror's return address is shown on the container.
- c. If the Owner closes its offices due to inclement weather scheduled bid openings or receipt of proposals will be extended to the next business day, same time.

6. **WITHDRAWAL OF BIDS/PROPOSALS:**

A Bidder/Offeror for a contract other than for public construction may request withdrawal of his or her bid/proposal under the following circumstances:

- a. Bids/Proposals may be withdrawn on written request from the Bidder/Offeror received at the address shown in the solicitation prior to the time of acceptance.
- b. Requests for withdrawal of bids/proposals after opening of such bids/proposals but prior to award shall be transmitted to the Purchasing Agent, in writing, accompanied by full documentation supporting the request. If the request is based on a claim of error, documentation must show the basis of the error. Such documentation may take the form of supplier quotations, vendor work sheets, etc. If bid bonds were tendered with the bid, the Owner may exercise its right of collection.

No Bid/Proposal may be withdrawn under this paragraph when the result would be the awarding of the contract on another bid/Proposal of the same bidder/offeror or of another bidder/offeror in which the ownership of the withdrawing bidder/offeror is more than five percent. In the case of Invitation for Bid's, if a bid is withdrawn under the authority of this paragraph, the lowest remaining bid shall be deemed to be the low bid. No bidder/offeror who is permitted to withdraw a bid/proposal shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid/proposal was submitted.

7. **ERRORS IN BIDS/PROPOSALS** – When an error is made in extending total prices, the unit bid price will govern. Erasures in bids/proposals must be initialed by the bidder/offeror. Carelessness in quoting prices, or in preparation of bid/proposal otherwise, will not relieve the Bidder/Offeror. Bidders/Offerors are cautioned to recheck their bids/proposals for possible error. Errors discovered after public opening cannot be corrected and the bidder will be required to perform if his or her bid is accepted.
8. **IDENTIFICATION OF BID/PROPOSAL ENVELOPE:** The signed bid/proposal and requested copies should be returned in a separate envelope or package, sealed and identified with the following information:

ADDRESSED AS INDICATED ON PAGE 1
IFB/RFP NUMBER
TITLE
BID/PROPOSAL DUE DATE AND TIME
VENDOR NAME AND COMPLETE MAILING ADDRESS (RETURN ADDRESS)

If a bid/proposal is not addressed with the information as shown above, the Bidder/Offeror takes the risk that the envelope may be inadvertently opened and the information compromised, which may cause the bid/proposal to be disqualified. Bids/Proposals may be hand delivered to the designated location in the office issuing the solicitation. No other correspondence or other proposals should be placed in the envelope.

9. **ACCEPTANCE OF BIDS/PROPOSALS:** Unless otherwise specified, all formal bids/proposals submitted shall be valid for a minimum period of one hundred twenty (120) calendar days following the date established for acceptance. At the end of the one hundred twenty (120) calendar days the bid/proposal may be withdrawn at the written request of the Bidder/Offeror. If the proposal is not withdrawn at that time it remains in effect until an award is made or the solicitation is canceled.
10. **CONDITIONAL BIDS:** Conditional bids are subject to rejection in whole or in part.
11. **BIDDERS PRESENT:** At the time fixed for the opening of responses to a bid, bid contents will be made public for the information of bidders and other interested parties who may be present either in person or by representative. All bids will be opened at the time and place specified and read publicly. Bid tabulations are posted on the Procurement Division's Bulletin Board for a minimum of 10 days from award date.

At the time fixed for the receipt of responses for Request for Proposals, only the names of the offerors will be read and made available to the public.

12. **RESPONSE TO SOLICITATIONS:** In the event a vendor cannot submit a bid on a solicitation, the vendor is requested to return the solicitation cover sheet with an explanation as to why the vendor is unable to bid on these requirements. Because of the large number of firms listed on the Owner's Bidders List, it may be necessary to delete from this list the names of those persons, firms or corporations who fail to respond after having been invited to bid for three (3) successive solicitations. Such deletion will be made only after formal notification of the intent to remove the firm from the Owner's Bidder's List.
13. **BIDDER INTERESTED IN MORE THAN ONE BID:** If more than one bid is offered by any one party, either directly or by or in the name of his or her clerk, partner, or other persons, all such bids may be rejected. A party who has quoted prices on work, materials, or supplies to a bidder is not thereby disqualified from quoting prices to other bidders or firms submitting a bid directly for the work, materials or supplies.
14. **TAX EXEMPTION:** The Owner is exempt from the payment of any federal excise or any Virginia sales tax. The price bid must be net, exclusive of taxes. Tax exemption certificates will be furnished if requested by the Bidder/Offeror.

15. **DEBARMENT STATUS:** By submitting their bids/proposals, Bidders/Offerors certify that they are not currently debarred from submitting bids/proposals on contracts by the Owner, nor are they an agent of any person or entity that is currently debarred from submitting bids or proposals on contracts by the Owner or any agency, public entity/locality or authority of the Commonwealth of Virginia.
16. **ETHICS IN PUBLIC CONTRACTING:** The provisions contained in Sections 2.2-4367 through 2.2-4377 of the Virginia Public Procurement Act as set forth in the 1950 Code of Virginia, as amended, shall be applicable to all contracts solicited or entered into by the Owner. By submitting their bids/proposals, all Bidders/Offerors certify that their bids/proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Bidder, Offeror, supplier, manufacturer or subcontractor in connection with their bid/proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
17. **NO CONTACT POLICY:** No Bidder/Offeror shall initiate or otherwise have contact related to the solicitation with any Owner representative or employee, other than the Procurement Division, after the date and time established for receipt of bids/proposals. Any contact initiated by a Bidder/Offeror with any Owner representative, other than the Procurement Division, concerning this solicitation is prohibited and may cause the disqualification of the Bidder/Offeror from this procurement process.
18. **VIRGINIA FREEDOM OF INFORMATION ACT:** All proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act except as provided below:
- a. Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.
 - b. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of bids but prior to award, except in the event that the Owner decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award except in the event that the Owner decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to the public inspection only after award of the contract except as provided in paragraph "c" below. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.
 - c. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the bidder, offeror or contractor must invoke the protections of this section prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary.
 - d. Nothing contained in this section shall be construed to require the Owner, when procuring by "competitive negotiation" (Request for Proposal), to furnish a statement of reasons why a particular proposal was not deemed to be the most advantageous to the Owner.
19. **CONFLICT OF INTEREST:** Contractor certifies by signing bid to the Owner that no conflict of interest exists between Contractor and Owner that interferes with fair competition and no conflict of interest exists between Contractor and any other person or organization that constitutes a conflict of interest with respect to the contract with the Owner.

SPECIFICATIONS

20. **BRAND NAME OR EQUAL ITEMS:** Unless otherwise provided in the solicitation, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named; it conveys the general style, type, character, and quality of the article desired, and any article which the Owner in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The Bidder is responsible to clearly and specifically indicate the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the Owner to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding, only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid non-responsive. Unless the Bidder clearly indicates in its bid/proposal that the product offered is "equal" product, such bid/proposal will be considered to offer the brand name product referenced in the solicitation.
21. **FORMAL SPECIFICATIONS:** When a solicitation contains a specification which states no substitutes, no deviation therefrom will be permitted and the bidder will be required to furnish articles in conformity with that specification.
22. **OMISSIONS & DISCREPANCIES:** Any items or parts of any equipment listed in this solicitation which are not fully described or are omitted from such specification, and which are clearly necessary for the completion of such equipment and its appurtenances, shall be considered a part of such equipment although not directly specified or called for in the specifications.

The Bidder/Offeror shall abide by and comply with the true intent of the specifications and not take advantage of any unintentional error or omission, but shall fully complete every part as the true intent and meaning of the specifications and drawings. Whenever the mention is

made of any articles, material or workmanship to be in accordance with laws, ordinances, building codes, underwriter's codes, A.S.T.M. regulations or similar expressions, the requirements of these laws, ordinances., etc., shall be construed as to the minimum requirements of these specifications.

23. **CONDITION OF ITEMS:** Unless otherwise specified in the solicitation, all items shall be new, in first class condition.

AWARD

24. **AWARD OR REJECTION OF BIDS:** The Purchasing Agent shall award the contract to the lowest responsive and responsible bidder complying with all provisions of the IFB, provided the bid price is reasonable and it is in the best interest of the Owner to accept it. Awards made in response to a RFP will be made to the highest qualified offeror whose proposal is determined, in writing, to be the most advantageous to the Owner taking into consideration the evaluation factors set forth in the RFP. The Purchasing Agent reserves the right to award a contract by individual items, in the aggregate, or in combination thereof, or to reject any or all bids/proposals and to waive any informality in bids/proposals received whenever such rejection or waiver is in the best interest of the Owner. Award may be made to as many bidders/offerors as deemed necessary to fulfill the anticipated requirements of the Owner. The Purchasing Agent also reserves the right to reject the bid if a bidder is deemed to be a non-responsible bidder.
25. **ANNOUNCEMENT OF AWARD:** Upon the award or announcement of the decision to award a contract as a result of this solicitation, the Procurement Division will publicly post such notice on the bulletin board located on the 2nd Floor, 320 Hospital Drive, Warrenton, Virginia. Award results may be viewed at the Procurement Website at www.fauquiercounty.gov/government/departments/procurement.
26. **QUALIFICATIONS OF BIDDERS OR OFFERORS:** The Owner may make such reasonable investigations as deemed proper and necessary to determine the ability of the Bidder/Offeror to perform the work/furnish the item(s) and the Bidder/Offeror shall furnish to the Owner all such information and data for this purpose as may be requested. The Owner reserves the right to inspect Bidder's/Offeror's physical facilities prior to award to satisfy questions regarding the Bidder's/Offeror's capabilities. The Owner further reserves the right to reject any bid or proposal if the evidence submitted by or investigations of, such Bidder/Offeror fails to satisfy the Owner that such Bidder/Offeror is properly qualified to carry out the obligations of the contract and to complete the work/furnish the item(s) contemplated therein.
27. **TIE BIDS:** In the case of a tie bid, the Owner may give preference to goods, services and construction produced in Fauquier County or provided by persons, firms or corporations having principal places of business in the County. If such choice is not available, preference shall then be given to goods and services produced in the Commonwealth pursuant to Section 2.2-4324 of the Code of Virginia. If no County or Commonwealth choice is available, the tie shall be decided by lot.

CONTRACT PROVISIONS

28. **APPLICABLE LAW AND COURTS:** Any contract resulting from this solicitation shall be governed in any respects by the laws of Virginia, and any litigation with respect thereto shall be brought in the Circuit Court of Fauquier County, Virginia. The Contractor shall comply with applicable federal, state and local laws and regulations.
29. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By submitting their bids, Bidders certify that they do not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.
30. **ANTI-TRUST:** By entering into a contract, the Contractor conveys, sells, assigns, and transfers to the Owner all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust law of the United States and Fauquier County, relating to the particular goods or services purchased or acquired by the Owner under said contract. Consistent and continued tie bidding could cause rejection of bids by the Purchasing Agent and/or investigation for Anti-Trust violations.
31. **PAYMENT TERMS:** Unless otherwise provided in the solicitation payment will be made forty-five (45) days after receipt of a proper invoice, or forty-five (45) days after receipt of all goods or acceptance of work, whichever is the latter.
1. Invoices for items/services ordered, delivered/performed and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the contract number, purchase order number, and any federal employer identification number.
 2. Any payment terms requiring payment in less than 45 days will be regarded as requiring payment 45 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 45 days, however.
 3. The date of payment shall be deemed the date of postmark in all cases where payment is made by mail.
 4. The Owner's fiscal year is July 1 - June 30. Contractors are advised to submit invoices, especially for goods and/or services provided in the month of JUNE, for the entire month i.e. June 1 - June 30, so that expenses are recognized in the appropriate fiscal year.

32. **PAYMENT TO SUBCONTRACTORS:** A contractor awarded a contract under this solicitation is hereby obligated:

1. To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Owner for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
2. To notify the Owner and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.

The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Owner, except for amounts withheld as stated in 2 above. The date of mailing of any payment by U.S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Owner.

33. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the Contractor in whole or in part without the written consent of the Purchasing Agent.

34. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Owner, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to other remedies which the Owner may have.

35. **ANTI-DISCRIMINATION:** By submitting their bids/proposals, Bidders/Offerors certify to the Owner that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and Section 2.2-4311 of the *Virginia Public Procurement Act*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (Code of Virginia, §2.2-4343.1(E)).

In every contract over \$10,000 the provisions in A and B below apply:

A. During the performance of this contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
2. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Section.

B. The Contractor will include the provisions of A. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

36. **INVOICES:** Invoices for items ordered, delivered and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the IFB/RFP number and/or purchase order number.

37. **CHANGES TO THE CONTRACT:** Changes can be made to the contract in any of the following ways:

- A. The parties may agree to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
- B. The Owner may order changes within the general scope of the contract at any time by written notice to the Contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Owner a credit for any savings. Said compensation shall be determined by one of the following methods.
 1. By mutual agreement between the parties in writing; or

2. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Owner's right to audit the Contractor's records and/or determine the correct number of units independently; or

3. By ordering the Contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present the Owner with all vouchers and records of expenses incurred and savings realized. The Owner shall have the right to audit the records of the Contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Procurement Division within thirty (30) days from the date of receipt of the written order from the Procurement Division. If the parties fail to agree on an amount of adjustment, the questions of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for relieving disputes provided by the Disputes Clause of this contract. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the Contractor from promptly complying with the changes ordered by the Owner or with the performance of the contract generally.

C. No modification for a fixed price contract may be increased by more than 25% or \$50,000, whichever is greater without the advanced written approval of the Board of Supervisors or the School Board, as applicable.

38. **INDEMNIFICATION:** Contractor shall indemnify, keep and save harmless the Owner, its agents, officials, employees and volunteers against claims of injuries, death, damage to property, patent claims, suits, liabilities, judgments, cost and expenses which may otherwise accrue against the Owner in consequence of the granting of a contract or which may otherwise result therefrom, if it shall be determined that the act was caused through negligence or error, or omission of the Contractor or his or her employees, or that of the subcontractor or his or her employees, if any; and the Contractor shall, at his or her own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith; and if any judgment shall be rendered against the Owner in any such action, the Contractor shall, at his or her own expenses, satisfy and discharge the same. Contractor expressly understands and agrees that any performance bond or insurance protection required by this contract, or otherwise provided by the Contractor, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Owner as herein provided.

39. **DRUG-FREE WORKPLACE:** During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "*drug-free workplace*" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

40. **TERMINATION:** Subject to the provisions below, the contract may be terminated by the Owner upon thirty (30) days advance written notice to the other party. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.

A. Termination for Convenience: In the event that the contract is terminated upon request and for the convenience of the Owner, without the required thirty (30) days advance notice, then the Owner shall be responsible for payment of services up to the termination date.

B. Termination for Cause: Termination by the Owner for cause, default or negligence on the part of the contractor shall be excluded from the foregoing provision; termination costs, if any shall not apply. However, pursuant to paragraph 32 of these General Conditions, the Owner may hold the contractor responsible for any resulting additional purchase and administrative costs. The thirty (30) days advance notice requirement is waived in the event of Termination for Cause.

C. Termination Due to Unavailability of Funds in Succeeding Fiscal Years: When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year, the contract shall be canceled.

41. **USE OF CONTRACT BY OTHER POLITICAL JURISDICTIONS:** Bidders are advised that all resultant contracts will be extended, with the authorization of the Bidder, to Northern Virginia Metropolitan Washington Council of Governments jurisdictions and other jurisdictions and Political Subdivisions of the Commonwealth of Virginia to permit their ordering of supplies and/or services at the prices and terms of the resulting contract. If any other jurisdiction decides to use the final contract, the Contractor must deal directly with that jurisdiction or political subdivision concerning the placement or orders, issuance of the purchase order, contractual disputes, invoicing and payment. Fauquier County acts only as the "Contracting Agent" for these jurisdictions and political subdivisions. Failure to extend a contract to any jurisdiction will have no effect on consideration of your bid/proposal.

It is the awarded vendor's responsibility to notify the jurisdictions and political subdivision of the availability of the contract.

Each participating jurisdiction and political subdivision has the option of executing a separate contract with the awardee. Contracts entered into with them may contain general terms and conditions unique to those jurisdictions and political subdivisions covering minority participation, non-discrimination. If, when preparing such a contract, the general terms and conditions of a jurisdiction are unacceptable to the awardee, the awardee may withdraw its extension of the award to that jurisdiction.

Fauquier County shall not be held liable for any costs or damage incurred by another jurisdiction as a result of any award extended to that jurisdiction or political subdivision by the awardee.

42. **AUDIT:** The Contractor hereby agrees to retain all books, records and other documents relative to this contract for five years after final payment, or until audited by the Owner, whichever is sooner. The agency, its authorized agents, and/or Owner auditors shall have full access to and right to examine any of said materials during said period.
43. **SEX OFFENDER REGISTRY NOTIFICATION:** As a condition of awarding a contract for the provision of services that require the contractor or his employees to have direct contact with students on school property during regular school hours or during school-sponsored activities or children/students at any County/School public location or facility, the Owner will require the contractor to provide certification that all persons who will provide such services have not been convicted of a felony or any offense involving the sexual molestation or physical or sexual abuse or rape of a child. This requirement does not apply to a contractor or his employees providing services to a school division/public Owner facility in an emergency or exceptional situation, such as when student/child health or safety is endangered or when repairs are needed on an urgent basis to ensure the school facilities/public Owner facilities are safe and habitable, when it is reasonably anticipated that the contractor or his employees will have no direct contact with students/children.

DELIVERY PROVISION

44. **SHIPPING INSTRUCTIONS-CONSIGNMENT:** Unless otherwise specified in the solicitation each case, crate, barrel, package, etc., delivered under the contract must be plainly stenciled or securely tagged, stating the Contractor's name, purchase order number, and delivery address as indicated in the order. Where shipping containers are to be used, each container must be marked with the purchase order number, name of the Contractor, the name of the item, the item number, and the quantity contained therein. Deliveries must be made within the hours of 8:00 a.m. – 2:30 p.m. Deliveries at any other time will not be accepted unless specific arrangements have been previously made with the designated individual at the delivery point. No deliveries will be accepted on Saturdays, Sundays and holidays unless previous arrangements have been made. It shall be the responsibility of the contractor to insure compliance with these instructions for items that are drop-shipped.
45. **RESPONSIBILITY FOR SUPPLIES TENDERED:** The Contractor shall be responsible for the materials or supplies covered by the contract until they are delivered at the designated point, but the Contractor shall bear all risk on rejected materials or supplies after notice of rejection. Rejected materials or supplies must be removed by and at the expense of the contractor promptly after notification of rejection, unless public health and safety require immediate destruction or other disposal of rejected delivery. If rejected materials are not removed by the Contractor within ten (10) days after date of notification, the Owner may return the rejected materials or supplies to the Contractor at his or her risk and expense or dispose of them as its own property.
46. **INSPECTIONS:** The Owner reserves the right to conduct any test/inspection it may deem advisable to assure supplies and services conform to the specification. Inspection and acceptance of materials or supplies will be made after delivery at destinations herein specified unless otherwise stated. If inspection is made after delivery at destination herein specified, the Owner will bear the expense of inspection except for the value of samples used in case of rejection. Final inspection shall be conclusive except in regard to latent defects, fraud or such gross mistakes as to amount to fraud. Final inspection and acceptance or rejection of the materials or supplies will be made as promptly as practicable, but failure to inspect and accept or reject materials or supplies shall not impose liability on the Owner for such materials or supplies as are not in accordance with the specifications.
47. **COMPLIANCE:** Delivery must be made as ordered and in accordance with the solicitation or as directed by the Procurement Division when not in conflict with the bid/contract. The decision as to reasonable compliance with delivery terms shall be final. Burden of proof of delay in receipt of goods by the purchaser shall rest with the Contractor. Any request for extension of time of delivery from that specified must be approved by the Procurement Division, such extension applying only to the particular item or shipment affected. Should the Contractor be delayed by the Owner, there shall be added to the time of completion a time equal to the period of such delay caused by the Owner. However, the contractor shall not be entitled to claim damages of extra compensation for such delay or suspension. These conditions may vary for construction contracts.
48. **POINT OF DESTINATION:** All materials shipped to the Owner must be shipped F.O.B. DESTINATION unless otherwise stated in the contract. The materials must be delivered to the "Ship To" address indicated on the purchase order.
49. **REPLACEMENT:** Materials or components that have been rejected by the Procurement Division, in accordance with the terms of the contract, shall be replaced by the Contractor at no cost to the Owner.

50. **PACKING SLIPS OR DELIVERY TICKETS:** All shipments shall be accompanied by Packing Slips or Delivery Tickets and shall contain the following information for each item delivered:

1. Purchase Order Number,
2. Name of Article and Stock Number,
3. Quantity Ordered,
4. Quantity Shipped,
5. Quantity Back Ordered,
6. The Name of the Contractor.

Contractors are cautioned that failure to comply with these conditions shall be considered sufficient reason for refusal to accept the goods.

BIDDER/CONTRACTOR REMEDIES

51. **PROTEST OF AWARD OR DECISION TO AWARD:** Any Bidder/Offeree who desires to protest the award or decision to award a contract, by either Fauquier County or The School Board of Fauquier County, shall submit such protest in writing to the County Administrator (if the award or decision to award was made by Fauquier County) or the Superintendent of Schools (if the award or decision to award was made by the School Board of Fauquier County), no later than ten (10) days after public notice of the award or announcement of the decision to award, whichever comes first. No protest shall lie for a claim that the selected bidder/Offeree is not a responsible Bidder/Offeree. The written protest shall include the basis for the protest and the relief sought. The County Administrator or the Superintendent of Schools, as the case may be, shall issue a decision in writing within ten (10) days stating the reasons for the action taken. This decision shall be final unless the bidder/offeree appeals within ten (10) days of the written decision by instituting legal action as provided in Section 7.8 C of the Procurement Policy. Nothing in this paragraph shall be construed to permit an offeror to challenge the validity of the terms or conditions of the solicitation.
52. **DISPUTES:** Contractual claims, whether for money or other relief, shall be submitted in writing to the Superintendent of Schools (if the claim is against the School Board of Fauquier County) or the County Administrator (if the claim is against Fauquier County) no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the Work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amount agreed due in the final payment. A written decision upon any such claims will be made by the School Board (if the claim is against the School Board of Fauquier County) or the County Board of Supervisors (if the claim is against Fauquier County) within sixty (60) days after submittal of the claim. The Contractor may not institute legal action prior to receipt of the School Board or Board of Supervisor's (whichever is applicable) decision on the claim unless the applicable party fails to render such decision within sixty (60) days. The decision of the School Board or Board of Supervisor's (as applicable) shall be final and conclusive unless the Contractor within six (6) months of the date of the final decision on a claim, initiates legal action as provided in Section 2.2-4364 of the Code of Virginia. Failure of the School Board or Board of Supervisors to render a decision within sixty (60) days shall not result in the Contractor being awarded the relief claimed nor shall it result in any other relief or penalty. Should the School Board or Board of Supervisors (as applicable) fail to render a decision within sixty (60) days after submittal of the claim, the Contractor may institute legal action within six (6) months after such 60-day period shall have expired, or the claim shall be deemed finally resolved. No administrative appeals procedure pursuant to Section 2.2-4365 of the Code of Virginia has been established for contractual claims under this contract.

SPECIAL TERMS AND CONDITIONS

- S1. **WARRANTY OF MATERIALS AND WORKMANSHIP:** The Contractor warrants that, unless otherwise specified, all materials and equipment incorporated in the work under the contract shall be new, in first class condition, and in accordance with the contract documents. The Contractor further warrants that all workmanship shall be of the highest quality and in accordance with contract documents and shall be performed by persons qualified at their respective trades. Work not conforming to these warranties shall be considered defective. All extended warranties furnished by manufacturers of equipment or fixtures shall be passed on to the Owner.

This warranty of materials and workmanship is separate and independent from and in addition to any of the Contractor's other guarantees or obligations in this contract.

- S2. **USE OF PREMISES AND REMOVAL OF DEBRIS:** The Contractor shall:
Perform his contract in such a manner as not to interrupt or interfere with the operation of any existing activity on the premises or with the work of any Contractor;

Store his apparatus, materials, supplies, and equipment in such orderly fashion at the site of the work as will not unduly interfere with the progress of his work or the work of any other Contractor; and

Place upon the work or any part thereof only such loads as are consistent with the safety of that portion of the work.

The Contractor expressly undertakes, either directly or through his subcontractor(s), to effect all cutting, filling, or patching of his work required to make the same conform to the drawings and specifications, and, except with the consent of the Owner, not to cut or otherwise alter the work of any other Contractor. The Contractor shall not damage or endanger any portion of the work or premises, including existing improvements, unless called for by the contract.

The Contractor expressly undertakes, either directly or through his subcontractor(s), to clean up frequently all refuse, rubbish, scrap materials, and debris caused by his operations, to the end that at all times the site of the work shall present a neat, orderly, and workmanlike appearance. No such refuse, rubbish, scrap material, and debris shall be left within the completed work nor buried on the building site, but shall be removed from the site and properly disposed of in a licensed landfill or otherwise as required by law.

During and at completion of the work, the Contractor shall prevent site soil erosion, the runoff of silt and/or debris carrying water from the site, and the blowing of debris off the site in accordance with the applicable requirements and standards of the Virginia Erosion and Sediment Control Handbook, latest edition, and of the contract documents.

The Contractor shall not operate or disturb the setting of any valves, switches or electrical equipment on the service lines to the building except by proper previous arrangement with the Owner. The Contractor shall give ample advance notice of the need for cut-offs which will be scheduled at the convenience of the Owner.

- S3. **LAWS AND REGULATIONS:** The Contractor shall comply with all laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the performance of the work and shall give all notices required thereby.

This contract and all other contracts and subcontracts are subject to the provisions of Articles 3 and 5, Chapter 4, Title 40.1, *Code of Virginia*, relating to labor unions and the "right to work". The Contractor and its subcontractors, whether residents or nonresidents of Fauquier County, who perform any work related to the project shall comply with all of the said provisions.

The provisions of all rules and regulations governing safety as adopted by the Safety Codes Commission of the Commonwealth of Virginia and as issued by the Department of Labor and Industry under Title 40.1 of the *Code of Virginia* shall apply to all work under this contract. Inspectors from the Department of Labor and Industry shall be granted access to the work for inspection without first obtaining a search warrant from the court.

- S4. **PROTECTION OF PERSONS AND PROPERTY:** The Contractor shall take every precaution at all times for the protection of persons and property which may come on the building site or be affected by the Contractor's operation in connection with the work.

The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work.

The provisions of all rules and regulations governing safety as adopted by the Safety Codes Commission of the Commonwealth of Virginia, issued by the Department of Labor and Industry under Title 40.1 of the Code of Virginia shall apply to all work under this contract.

The Contractor shall continuously maintain adequate protection of all his work from damage and shall protect the Owner's property from injury or loss arising in connection with this contract. He shall make good any such damage, injury or loss, except such that may be directly caused by employees of the Owner. He shall adequately protect adjacent property to prevent any damage to it or loss of use and enjoyment by the Owner.

In an emergency affecting the safety or life of persons or of the work, or of the adjoining property, the Contractor, without special instruction or authorization from the Owner, shall act immediately, without appeal.

- S5. **WORK SITE DAMAGES:** The Contractor agrees to be responsible for the safe operation of equipment and the securing of said equipment while performing the services set forth in this solicitation. Any damage to existing utilities, equipment or finished surfaces, resulting from the performance of this contract shall be repaired to the Owner's satisfaction at the Contractor's expense.

DIVISION OF RISK MANAGEMENT INSURANCE CHECKLIST

Items marked "X" are required to be provided if award is made to your firm.

| <u>Required</u> | <u>Coverage Required</u> | <u>Limits</u> <u>(figures denotes minimum)</u> |
|-----------------|---|---|
| <u>X</u> | 1. Worker's Compensation and Employers' Liability; Admitted in Virginia Employers' Liability All States Endorsement USL & H Endorsement Voluntary Compensation Endorsement Best's Guide Rating-A-VIII or better, or its equivalent | 1. Statutory Limits of the Commonwealth of VA Yes \$100,000/\$500,000/\$100,000 Statutory Statutory |
| <u>X</u> | 2. Commercial General Liability General Aggregate Products/Completed Operations Personal and Advertising Injury Fire Legal Liability Best's Guide Rating-A-VIII or better, or its equivalent | 2. \$1,000,000 (CSL) Each Occurrence \$2,000,000 \$2,000,000 \$1,000,000 \$50,000 Per Occurrence |
| <u>X</u> | 3. Automobile Liability Owned, Hired, Borrowed & Non-owned Motor Carrier Act End. Best's Guide Rating-A-VIII or better, or its equivalent | 3. \$1,000,000 combined Single Limit Bodily Injury and Property Damage Each Occurrence (note, symbol "1" on liability coverage) |
| <u>X</u> | 4. Prof. Errors and Omissions Best's Guide Rating-A-VIII or better, or its equivalent | 4. \$1,000,000 (CSL) Each Claim |
| — | 5. Garage Liability | 5. \$1,000,000 CSL Each Occurrence |
| — | 6. Garage Keeper's Legal Liability Best's Guide Rating-A-VIII or better, Or its equivalent | 6. a) Maximum Value of One Vehicle b) Maximum Value of All Vehicles Held by Contractor |
| <u>X</u> | 7. Umbrella Liability Best's Guide Rating-A-VIII or better, or its equivalent. | 7. \$1,000,000 |
| — | 8. Other Insurance: | |
| <u>X</u> | 9. Fauquier County and/or Fauquier County School Board named as additional insured On Auto and General Liability Policies (This coverage is primary to all other coverage The County and Schools may possess and must be shown on the certificate) | |
| <u>X</u> | 10. 30 day written cancellation notice required for non-payment to Fauquier County and/or Fauquier County School Board – Ref. Code of Virginia Section 38.2-231. Also, the words "endeavor to" and "failure to mail such notice" clause shall be removed from the cancellation notice. | |
| <u>X</u> | 11. The Certificate must state Bid/RFP No. and Bid/RFP Title. | |
| <u>X</u> | 12. Contractor shall submit Certificate of Insurance within five (5) business days from notification of award, and shall provide updated Certificates for the duration of the contract. | |

OFFEROR STATEMENT

We understand the Insurance Requirements of these specifications and will comply in full if awarded this contract.

FIRM

SIGNATURE

Revised 2/16/06 – tr

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PROPRIETARY INFORMATION:

Ownership of all data, materials, and documentation originated and prepared for the Owner pursuant to the REQUEST FOR PROPOSAL shall belong exclusively to the Owner and be subject to public inspection in accordance with the Virginia Freedom of Information Act. Trade secrets or proprietary information submitted by an Offeror shall not be subject to public disclosure under the Virginia Freedom of Information Act, however, the Offeror must invoke the protections of Section 2.2-4342F of the Code of Virginia, in writing, either before or at the time the data or other material is submitted. The written notice must specifically identify the data or materials to be protected and state the reasons why protection is necessary. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information.

NOTICE OF PROPRIETARY INFORMATION

Confidentiality References Protection in Accordance with the Code of Virginia, Section 2.2-4342F

| Section Title | Page Number | Reason(s) for Withholding from Disclosure |
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NOTICE OF PROPRIETARY INFORMATION (CONTINUED):

INSTRUCTIONS: Identify the data or other materials to be protected and state the reasons by using the codes listed below. Indicate the specific words, figures, or paragraphs that constitute trade secrets or proprietary materials.

- A- This page contains information relating to "trade secrets", and "proprietary information" including processes. Operations, style of work, or apparatus, identify confidential statistical data, amount or source of any income... of any person (or) partnership. "See Virginia Public Procurement Act. Section 2.2-4342F. Unauthorized disclosure of such information would violate the Trade Secrets Act 18 U.S.C. 1905.
- B- This page contains proprietary information including confidential, commercial or financial information which was provided to the Government on a voluntary basis and is of the type that would not customarily be released to the public. See Virginia Public Procurement Act, Section 2.2-4342F; 5 U.S.C. 552 (b)(4); 12 C.F.R. 309.5(c)(4).
- C- This page contains proprietary information including confidential, commercial or financial information. This disclosure of such information would cause substantial harm to competitive position and impair the Government's ability to obtain necessary information from contractors in the future. 5 U.S.C. See Virginia Public Procurement Act. Section 2.2-4342F; 552 (b)(4); 12 C. F. R 309.5(c)(4).

RETURN THIS PAGE ONLY IF APPLICABLE

EXCEPTIONS TO RFP

Name of Offeror: _____

Please list any deviations to RFP specifications below:

[illegible]**RETURN THIS PAGE ONLY IF APPLICABLE**